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IN THE
SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

Respondents.

On Writ of Certiorari To The Supreme Court of Washington

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1/]

AARP is a nonprofit membership organization of more than 35 million persons age fifty and older dedicated to addressing the needs and interests of older Americans. AARP

[1/] This brief has been authored in its entirety by undersigned counsel for the *amicus*. No person or entity, other than the named *amicus* and their counsel, made any monetary contribution to the preparation or submission of this brief. Letters of consent from both parties have been filed separately with the Clerk of the Court.

submits this amicus brief to highlight for the Court the importance to older persons of the anti-alienation and representative payee provisions of the Social Security Act at issue in this case. 42 U.S.C. § 407(a) (2002) (anti-alienation provision); 42 U.S.C. § 405(j) (2002) (representative payee provision).

Children in foster care are less than 1% of the total population receiving Social Security and Supplemental Security Income ("SSI") benefits. In December 2000, there were over 45 million beneficiaries of Old-Age, Survivors, and Disability Insurance ("Social Security benefits"). The vast majority of Social Security beneficiaries are older persons. Indeed, some Social Security benefits, such as retirement benefits, are provided only to persons over the age of 62. In December 2000, children under the age of 18 constituted approximately 7% of all Social Security beneficiaries. Less than 1% of the total beneficiaries were children under the age of 18 who were not in the custody of the parent payee. Social Security Bulletin, Annual Statistical Supplement, at 21, 246 (2001),available at http://www.ssa.gov/statistics/Supplement/2001/supp01.pdf. Similarly, in December 2000, children under 18 comprised 12.7% of SSI recipients. Less than 1% of SSI beneficiaries were children who did not live in their own household. *Id.* at 290.

Moreover, many individuals utilizing a representative payee are older Americans, not children. In December 2000, over 1.7 million adults had their Social Security benefits administered by representative payees, including 420,860 retired workers over the age of 65. Approximately 1.38 million adults received SSI benefits through a representative payee, with 151,789 of those adults over the age of 65. Social Security Bulletin, *supra,* at 246, 291. While almost all children receiving benefits have a representative payee, the majority of these children are not foster care children. Approximately 90% of the children receiving Social Security benefits are in the custody of their parents, and approximately 95% of the children receiving SSI benefits live in their own household. *Id.*

Millions of older Americans could be affected by a decision of the Court interpreting the requirements of the anti-alienation and representative payee provisions of the Social Security Act. AARP submits this amicus brief to highlight the importance to older persons of the Court continuing to interpret these provisions in a manner that protects beneficiaries from creditors.

SUMMARY OF ARGUMENT

The Court has frequently noted that the Social Security Act is intended to be a remedial statute and should be interpreted to be unusually protective of beneficiaries. The legislative history of the anti-alienation provision provides further support for a broad construction of the statute, emphasizing the importance of protecting benefits from debts in order to ensure the basic necessities of life for beneficiaries. The decision below properly interpreted the Social Security Act's anti-alienation and representative payee provisions to bar the state from seizing the benefits of foster children to pay for general state administrative expenditures and debts.

ARGUMENT

THE TERM "OTHER LEGAL PROCESS" ENCOMPASSES STATE LAWS AND ADMINISTRATIVE COLLECTION PROCEDURES

The Supreme Court of Washington held that the transfer of the Social Security and SSI benefits of foster care children to the state treasury violated the Social Security Act's alienation provision. *Keffeler v. State of Washington Department of Social & Health Services,* 145 Wn.2d 1, 25, 32 P.3d 267, 278 (Wash. 2000). The court ruled that the state's laws and administrative procedures fell within the ambit of the term "other legal process" in 42 U.S.C. § 407(a). *Id.*

Petitioners argue that the term "other legal process" should be narrowly construed to exclude any and all actions of a representative payee. Brief for the Petitioners, *Keffeler* (No.

01-1420). The Commissioner of the Social Security Administration, filing an amicus brief in support of Petitioner, argues that the term should be narrowly construed to exclude any and all processes that occur outside the courtroom, constricting the term to judicial procedures. Brief for *Amicus Curiae* United States of America, *Keffeler* (No. 01-1420).

AARP urges the Court to reject those narrow constructions. The phrase "other legal process" is a broad term, which surely covers the system of laws and procedures by which the state seizes the private property of its citizens and transfers it to the state budget.

The Court has explained that the Social Security Act is intended to be a protective and remedial statute, and therefore, is to be liberally construed. In *United States v. Silk*, 331 U.S. 704, 710, 712 (1947), a case involving tax provisions of the Social Security Act, the Court stated:

> The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life. ... It was enacted in an effort to coordinate the forces of government and industry for solving the problems.
>
> * * * * *
>
> As the federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised.

Subsequently, in *Heckler v. Day*, 467 U.S. 104, 106 (1984) and *Bowen v. City of New York*, 476 U.S. 467, 480 (1986), the Court stressed that Congress designed the Social Security Act to be "unusually protective" of claimants.

In *Miller v. Youakim*, 440 U.S. 125 (1979), the Court examined AFDC-FC payments to relative caretakers, focusing on whether family members could be included within the meaning of the term "foster homes." The Court rejected the state's narrow interpretation of that term and held that the Act did not embody "a congressional intent to constrict the broad statutory definition of 'foster family care.'" *Id.* at 136. Thus, the Court recognized that the Social Security Act should be broadly construed, unless there was clear congressional intent to the contrary.

The anti-alienation provision of the Act, 42 U.S.C. § 407(a), was included in the original Social Security Act passed in 1935. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624. The House Ways and Means Committee held hearings on the law but did not debate or otherwise clarify the meaning of the anti-alienation provision. *See* H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935). As originally passed, the provision applied only to Social Security benefits.

Amending the Social Security Act in 1972, Congress broadened the scope of the anti-alienation provision, making it applicable to SSI as well as Social Security benefits. The House Committee on Ways and Means explained the effect and purpose of the expansion of the anti-alienation provision to SSI, when it reported the bill to the full House of Representatives. The Committee Report states:

> Your committee wishes to emphasize its strong belief that if the benefits which would be provided under this program are to meet the basic needs of the poor, the benefits must be protected from seizure in legal processes against the beneficiary. Therefore, any amounts paid or payable under this program would not be subject to levy, garnishment, or other legal process, except the collection of delinquent federal taxes. Also, entitlement to these benefits would not be transferable or assignable.

H.R. Rep. No. 92-231, 92nd Cong., 2nd Sess. (1972), reprinted in (1972) U.S.Code. Cong. & Ad.News, pp. 4989, 5142.

It is noteworthy that "the collection of delinquent federal taxes" was listed as an exception to "other legal process." Delinquent federal taxes are not only collected through the judicial processes of the courts but also can be collected through the administrative procedures of the federal government. Thus, this legislative history demonstrates that "other legal process" includes not only judicial process but also administrative procedures that collect income or benefits from citizens.

In the instant case, the State of Washington utilized numerous laws and administrative procedures to transfer 97% of the foster children's Social Security and SSI benefits to the state treasury. A-60 ¶ 47. In some cases, parents reimbursed the state for its foster care expenditures, but the state nevertheless took the children's benefits, being reimbursed twice for the foster care payments. A-68 ¶ 77 - A-70 ¶ 84. In other cases, the state utilized children's benefits to repay itself for "debts" of foster care payments made years earlier. A-100-101. In addition, the state appropriated the children's Social Security and SSI benefits to reimburse the state's expenditures for the provision of transportation to foster care caseworkers, *see* JA 404-405, 407-71, which cannot possibly be viewed either as "current maintenance" of the children or as a debt owed by the children.

As set forth in great detail in the Respondent's brief, these transfers of the children's Social Security and SSI benefits to the state treasury were mandated by state statutes and regulations. Clearly, the laws and administrative procedures utilized by the State of Washington to transfer the children's Social Security and SSI benefits to the state treasury constitute "other legal process," which are prohibited by the Social Security Act's anti-alienation provision.

CONCLUSION

For the reasons stated, AARP urges the Court to affirm the decision below.

Respectfully Submitted,

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